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The Effect of Colonialism on Implementation of Agrarian Reform in Indonesia

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Abstract

The peasants supported the agrarian carried by Sukarno throughout Indonesia. How not, the basic agrarian law which then came into force on 1 January 1961 aims to restore and redeem (redistribution) agricultural land to each head of the farm family. The step for that begins with determining the maximum and minimum area of agricultural land, taking into account the population, area and other factors. But in its journey, agrarian reform was also influenced by Indonesia's political situation. The problem that will be discussed by the researcher is How do the elements of colonialism influence the implementation of Agrarian Reform in Indonesia? The research method used is a normative legal research method. With the ovary desk, in-depth interviews with related parties. The results of the study are: In addition to the evidence that still uses the Positief Wettelijk system, the state, through its tools, also puts forward repressive methods as a method of handling agrarian conflicts. So that it can be said that the "spirit" of the custom of the colonial government until now is still "carried" by the state. This has a big influence on the operation of the legal system and the application of the Agrarian Principles Law in agrarian reform.

Keywords: *Agrarian Reform, Colonialism, Indonesia*

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A. Introduction

Welfare is part of the government's obligation to the community as a people's right, as stated in the ideals of the law. Independence and the availability of abundant resources throughout the archipelago make these ideals impossible to achieve evenly and fairly. To support the realisation of this, state institutions and their supporting regulations are expected to be complementary so that they become a single unit to make the welfare state concept achievable. Before independence, welfare was very expensive and could only be enjoyed by certain groups such as the prijajis or at least aristocratic and children of regional officials. However, after the proclamation was announced, the government began a massive revolution against the system and reclaimed ownership of rights which had been dominated by the colonial government by carrying out the nationalisation movement. The first nationalisation movement against the former colonial government was to occupy vital objects belonging to the Dutch, followed by everything related to them. The colonial government which established its power in the archipelago for 350 years or approximately 3.5 centuries did leave a lot of inheritance and culture due to the long period of entrenched time until now we can still feel the rest of the rest. There are so many legacies of the colonial government, including art, building architecture, including the legal system. The colonial government adopted the legal system of Civil Law/Continental Europe, which was brought by France when colonising the Netherlands, which then made the system.

Indonesian law has written and codified characteristics, so the law is everything written, removing the existence of customary law that has existed long before. However, the law at that time was designed so that the people in the colonies were subject to and obedient to the colonial government so that the position of citizens with the State was truly subordinate. Of course, this is an unfavourable position for all the citizens of the Dutch East Indies. Yields that are rich in spices and mines in the exploitation of the colonial government have collaborated with certain parties to extort Indonesia's natural wealth. The land has provided many benefits to the people at that time, which most of their lives were hung from agricultural and plantation products.

Land and rights inherent in the land are indeed not something that can be considered trivial. It is just as sensitive as money if the community's rights to land are disturbed by other people, even though it is a little, it will cause a big problem. Historically, the community has utilised forest products and their contents to be used to fulfil their basic needs, and the community also provides feedback by caring for the forest.[1] Indigenous peoples believe in one thing that the control of all land within the relevant customary law area is within the power of the community itself. The real owner of the land is supernatural power.[2]

The agrarian policies that exist in Indonesia are the result of a series of a long history of political decisions from past periods. Because the analysis of this theme cannot be separated from the contours of past history. One thing that can be concluded from the historical horizon of agrarian policy in Indonesia is that there are variations in the approaches used to process and implement agrarian policies from time to time. Mubyarto, divided into three periods of agrarian history in Indonesia, namely the period of large foreign estates, the period after independence during the Old Order, and the last period of the New Order government.[3] To see a broader picture, this paper refers to the periodisation of agrarian policy as stated by Gunawan Wiradi,[4] looking at the history of land in Indonesia.

In 1811, the period of the birth of the domein theory pioneered by Raffles. This theory states that all land belongs to the king. This principle was used by the British in India. The state is considered as a super landlord, and the state must collect taxes. The state collects taxes through two main lines, namely through conquered nobles because of its political commitment to the emperor. The second path is through ordinary farmers who are designated in a certain agrarian area. This dominion theory is what ultimately becomes the cornerstone of the debate over the nature of relations between the state and the people in access to control of the land.

On the other hand, because the unwritten law only regulated the land in the Dutch East Indies which is very wide stretched, the colonial government made the law written or law on land to further regulate land ownership and use and use. The colonial government did not want to compromise on the circumcision of customary law that was ingrained and entrenched, which had

[1] Hayatul Ismi, "Pengakuan dan Perlindungan Hukum Hak-Hak Masyarakat Adat atas Tanah Adat dalam Upaya Memperbarui Hukum Nasional", *Jurnal Ilmu Hukum*, 3 (1), (2012).
[2] Effendi Perangin, *Hukum Agraria di Indonesia (Suatu Telaah dari Sudut Pandang Praktisi Hukum)* Jakarta: Rajagrafindo Persada, (1994), p. 122.
[3] Mubyarto et al., *Pekerjaan Tanah dan Tenaga Kerja: Studi Sosial-Ekono*mi, Yogyakarta: Pusat Penelitian Media Adiya untuk Pembangunan Pedesaan dan Wilayah, UGM, (1995), pp. 195-200.
[4] Gunawan Wiradi, *Reformasi Agraria: Perjalanan Belum Selesai*, Yogyakarta: Insist Press-KPA, (2000), p. 13.

become an inseparable part. But until now, on the other hand, the colonial "remnant" still feels imprinted on life around the land even though the Indonesian nation has become independent.

It is becoming very clear when conservative colonial cultural heritage was still embraced by the government and companies in the field. The Agrarian Basic Law which is always said to be siding with the people, is always hampered by its implementation when the enforcers instead choose to divert the direction, from the noble mandate of the Agrarian Principles to prosper the people as much as a task to gain personal and group benefits as big as through conflict management regulations and policies. A phenomenon that often causes horizontal conflicts [5] (conflicts between people or the community and corporations) and vertical (communities with bureaucrats). From the explanation above, the problem can be solved, how do the elements of colonialism influence the implementation of Agrarian Reform in Indonesia?

B. Method

The approach to the problem in this study uses a normative juridical approach. The Normative approach is intended as an effort to understand the problem by staying on or relying on the legal field.[6] Sources and types of data used in research, secondary data, namely data obtained in the form of sources that are closely related to primary legal material and can help analyse and understand primary data in the form of legislation, books, literature and articles-articles. Data collection is done by library research (library research), carried out with a series of activities such as reading, reviewing and quoting from the literature and conducting an assessment of the provisions of legislation relating to the subject matter. Data processing is done to facilitate the analysis of data that has been obtained following the problems studied. The data processing in question includes the following stages: It is a placement activity and arranges data that is interconnected and constitutes a unified and unified whole on sub-topics to facilitate data interpretation. Analysis Data used in this study is qualitative analysis. Data analysis is describing data in the form of sentences arranged systematically, clearly and in detail which are then interpreted to obtain a conclusion. Withdrawal of conclusions is made by the inductive method, which describes the specific things and then draws general conclusions.[7]

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[5] Endriatmo Soetarto, Martua Sihaloho, Heru Purwandari, "Reformasi Tanah Dengan *Leverage:* Kasus Redistribusi Lahan Di Jawa Timur", *Jurnal Transdisipliner Sosiologi, Komunikasi, dan Ekologi Manusia*, 1 (2), (2007), p. 275.

[6] Soerjono Soekanto, *Pengantar Penelitian Hukum*,Jakarta: Penerbit Rineka Cipta, (1986), p.55.

[7] *Ibid.*, p.102

C. Analysis and Discussion

The journey of agrarian arrangements in Indonesia in 1830, which was later famous for the birth of the culturstelsel or forced cultivation. The purpose of the birth of this system was to help the Dutch government when experiencing difficulties in the financial sector. All people working on land in Indonesia are considered tenants, and consequently, anyone must pay rent or land (2/5 of the yield) and are forced to plant 1/5 of their land with certain commodities such as tilapia, coffee, tobacco, tea, sugar cane. The commodity produced by this plant must be submitted to the Dutch government. This policy eventually led to enormous economic benefits for the Dutch government and caused opposition from various capitalists in the Netherlands.

In 1848, the birth of the Regerings Regelment (RR) 1854, basically was the era of the victory of liberals who in the law product was arranged so that the Dutch government gave recognition of the control of land by the pribumi as absolute property (eigendom) to allow sales and rentals. Besides that, it is also regulated so that on the principle of the domain the government provides an opportunity for private entrepreneurs to be able to rent long-term and cheap land, which is then known as granting erfpach rights. To achieve this goal in 1865 the colonial minister Frans van de Putte, submitted a draft law which contained that the Governor-General would grant erfpach rights for 99 years. Indigenous property rights are recognized as absolute property rights (eigendom), and communal land is used as the property of eigendom individuals. The draft law was later rejected and the ideals of the liberals to invest in agriculture failed.

In 1870, after minister van de Putte was overthrown for being too rushed to license leases to liberal groups. The de Wall colonial minister finally submitted a draft law which one of the articles was also in line with the wishes of the liberals, to give Erfach rights for 75 years. It is what became known as the Wet Agrarische 1870. Paragraph 1 of this Act finally included an important statement which came to be known as domein verklaring which stated: all unproven lands that on that land there are absolute millik rights (eigendom) is the dominion of the state (domein state means, belongs to the absolute state).

The year 1870 was the most important milestone of agrarian history in Indonesia, where from then until the 1900s capital began to flock into Indonesia. Since that period large plantations emerged in Java and Sumatra. In 1960, it was a national government in which various important moments took place. But one spirit of the efforts made by the regime of the Old Order government was the emergence of widespread awareness of state elites to seriously seek the formula for agrarian reform before Indonesia was further included in the industrialisation process. Birth of the Agrarian Basic Law

Number. 5 of 1960 was the culmination of the national agrarian political policy.[8] Before the emergence of the Basic Agrarian Law several times the government had formed a small committee to conduct in-depth agrarian studies including the Yogyakarta Committee (1948), Jakarta Committee (1951), Committee Suwahjo (1956), Draft Sunarjo (1958), and finally the Draft Sudjarwo (1960). Some analysts stated that indeed the birth of the Agrarian Basic Law No. 5 of 1960, actually was an attempt to lay the foundation of a development strategy as adopted by various Asian countries in the early post-Second World War (Japan, Korea, Taiwan, India and Iran). Neither the spirit contained in it nor the formal substance of the original article of UUPA 1960 does indeed reflect partiality to the interests of the people.[9]

Agrarische Wet 1870 is an "order" law from entrepreneurs because previously, employers only had rental rights to state land, which had a short time limit. They do not have the right to rent indigenous people's land, which causes less development of the business carried out. The efforts of entrepreneurs have rights to lease land to the people and as collateral to obtain capital, the businessman urges the colonial government to make regulations regarding this matter immediately, so that the existence of wet agrarianism gives legal certainty that entrepreneurs can develop their businesses and provide erfpacht rights (Land rights can be burdened with mortgages) that have a term of 75 years. Also, this law provides eigendom rights (customary land rights created by the colonial government and at times can be sold/bought by Europeans) to the people, which is just a form of pretence to respect and recognise customary law. Slowly but surely the movement of the acquisition of the colonial government towards public land was increasingly massive because the implementation of the Agrarische Wet was also supported by the Agrarische Besluit in which there were provisions regarding Domein Verklaring. This Domein Verklaring is then said to be a form of rape of the rights to the rights of people's land, where people's land is forced to belong to the state. [10] The concept is that land right that cannot be proven through a kind of deed or certificate automatically belong to the state, including customary land and land rights which are not certified. And of course, there are still many other customary land rights that are victims of greed and arbitrariness of the authorities at that time.

A glimmer of hope came when the Agrarian Basic Law was passed on September 24, 1960, when the spirit of Agrarian Reform. Which was carried

[8] Sukardi, *Ibid.*, pp.134-135, which explains in detail, that the trip to UUPA No. 5 of 1960 was actually intended to make arrangements and redistribution of agrarian resors which were considered as the main conditions for building industrialization as done in India, China.
[9] *Ibid.* p. 119.
[10] Boedi Harsono, *Hukum Agraria Indonesia (Sejarah Pembentukan UU Dasar Agraria, Isi dan Implementasinya*), Jakarta: Djambat, (2008), pp. 34-45.

by Soekarno supported by the peasants throughout Indonesia? How not, the Basic Agrarian Law which then came into force on January 1, 1961, aims to restore and redeem (redistribution) agricultural land to each head of the farm family. The step for that begins with determining the maximum and minimum area of agricultural land, taking into account the population, area and other factors.[11]

But in its journey, agrarian reform was also influenced by the Indonesian political situation, especially during the peak of the G 30 S / PKI[12] event. This program was even labelled as a communist program by the New Order regime designed by the PKI to seize power from legitimate rulers. It was said that because the PKI was considered as an institution involved in land grabbing cases by farmers, especially in Klaten and several areas in East Java which were manifested in unilateral actions. Barisan Tani Indonesia, as a PKI undertow, was accused of being a provocateur to redistribute land as a result of the slow implementation of the Agrarian Basic Law by bureaucrats/government which ironically was supported by rural landlords.[13] Example in the case in Jengkol village, Kediri Regency. Barisan Tani Indonesia with 3000 farmers who aimed to occupy and redistribute rice fields rented by the military which ended tragically with the loss of 24 lives of farmers.[14] The violence which became the beginning of the power of the New Order regime[15] it embodies a dark history with many lives floating. The Republic of Indonesia Army stated that the death toll was 78,000. The United States suspects 300,000 people have died or less. The New York Times assumed that the number reached 150,000 to 400,000, while The Washington Post said 500,000 people were lost.[16] It turned out that the violence that occurred to enforce the Agrarian Principles explicitly did not stop at that time, but it also happened in the next decade. At the beginning of the new order, for example. Forest management is taken over by Perhutani by using timber management or state-based forest management systems. But, the implications of this policy system favoured Perhutani while the surrounding village forest

[11] Iwan Nurdin, "Menyelesaikan Konflik Agraria Melalui Implementasi Reformasi Tanah", *Jurnal Reformasi Tanah*, Vol.1, (2014), p. 77.
[12] The PKI was the Indonesian communist party, which emerged during the reign of President Soekarno.
[13] Sudargo Gautama, *Interpretation of the Agrarian Basic Law*, Bandung: Alumni, (1981), p. 24
[14] Tri Chandra Aprianto, *Tafsir(an) Land reform Dalam Alur Sejarah Indonesia: Tinjauan Kritis Atas Tafsir(an) Yang Ada*, Yogyakarta: Karsa, (2006), p. 54
[15] *Ibid*., p .51.
[16] Eko Prasetyo And Terra Bajraghosa, *Awas Penguasa Tipu Rakyat,* Yogyakarta: Buku Riset, (2006), p. 17.

communities became marginalised both socially, economically and politically.[17]

It continued until the New Order regime ended. Such a conventional forest management model also raises various problems such as one of the frictions between the community and Perhutani because the community feels that it is not treated properly.[18] In Ngancar Village, Kediri Regency, East Java Province, agrarian conflicts helped to grow the seeds of hatred which were handed down from generation to generation. Ngancar villagers who rub against local companies, PT. The SSP chose to resist from 1968 due to land rights were forcibly seized without compensation.[19] After the Reformation, we can see other examples in Bima (NTT) and Mesuji (Lampung), which occurred in the same year, 2012. Not much different from other agrarian conflicts where the police are guarding the land in dispute, instead of killing community members involved in the protest. As expressed by Lawrence S. Friedman, several related factors determine law enforcement, namely the components of substance, structure and culture. Component components include the scope of the operation of the law as a system. Factors that determine the law enforcement process are divided into:

1. Legal substance
   The legal substance is composed of rules and regulations regarding how institutions behave.
2. Legal structure
   The structure of a system is the skeleton of the body; it is its permanent form, the institutional body of the system, rigid hard bone bones that keep the flowing process within its boundary.
3. Legal culture
   It is an element of social attitudes and values, which refers to parts that exist in the general culture of customs, opinion opinions, ways of acting and thinking that direct the power of social forces to get away from the law in certain ways.[20] Meanwhile, Soerjono Soekanto stated that the main problem was law enforcement. These include legal factors, law enforcement, facilities or facilities, society and culture.[21]

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[17] Sulistyaningsih, *Perlawanan Petani Hutan: Studi Atas Resistensi Berbasis Pengetahuan Lokal*, Yogyakarta: Wacana Pembuatan, (2013), p. 4.
[18] *Ibid.*, pp. 5-6.
[19] Muryanti, Damar Dwi Nugroho, dan Rokhiman, *Teori Konflik & Konflik Agraria Di Pedesaan*, Yogyakarta: Wacana Pembuatan, (2013), p. 45.
[20] Lawrence S Friedman, In Dyah Retna Sari Hariyanto, "Bantuan Hukum Bagi Orang Atau Kelompok Orang Miskin Dalam Perkara Pidana Demi Terselenggaranya Proses Hukum Yang Adil di Denpasar", *Tesis Magister Hukum, Fh Udayana*, (2014), pp. 39-40.
[21] Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta: Raja Grafindo Persada, (2013), p. 23.

From these views, it can be said that several reasons influence the implementation of agrarian reform in Indonesia. First, the inclusion of agrarian issues into the civil law section.

As a consequence, as we know, the proof system in civil procedural law is Positief Wettelijk, which means that proof only adheres to the evidence contained in article 1865 BW and the principle of actori incumbit probatio that what is postulated is what must prove.[22] Meanwhile, if we associate with cases or agrarian conflicts involving the community with corporations or bureaucrats, it can be ascertained that they will win because the two institutions are usually the parties holding the certificate of ownership rights. Therefore all agrarian conflicts will be brought to the public court and resolved in civil service. Even though it has been stated above that customary land cannot be proven in real terms in the form of letters, but by a kind of supernatural power, then there should be a separate judicial environment with its procedural law. Second, government policy in practice to overcome agrarian conflicts Usually, to resolve agrarian conflicts the government uses military or police services that tend to be repressive by beating, kicking or even firing at crowds of people who are demanding their rights or are protesting fraud committed by companies. It is a reminder we are going to Agrarische Wet, which is made because of the orders of certain groups, namely entrepreneurs and of course people become victims. Law No. 24 of 2007 concerning Disaster Management is also a disaster for Lapindo mudflow victims, where "natural disasters" have definitions as an event caused by natural disasters, but no mention of disasters that occur due to non-natural factors such as due to human actions (human error).[23]

It raises the assumption that Indonesia is a country that adheres to neo-liberal economic ideology with an extension of the popular economy. It means that the efforts of capitalist countries to exert their influence in Indonesia to start a new style of colonialism (neo-colonialism) have entered an "amazing" level. The neo-liberalism ideology that deifies free markets takes the principle of (a) free trade; (b) free labour; (c) free investment; (d) free capital; and (e) free competition, making the suffering of this nation more complete,[24] Cheap labour, the entry of exported goods that bring down domestic entrepreneurs to access to expensive education to increase fuel prices for motorized vehicles. This third point might be referred to as the inheritance of elements of colonial

[22] Hiariej Eddy O.S, *Teori dan Hukum Pembuktian*, Jakarta: Erlangga, (2012), p.23.

[23] Riktan, Controversy in Lapindo Mud Case Arrangement, http://Tansrik.Blogspot.Com/2009/12/Kontroversi-P--Kebaturan.Html, Accessed on January 3th, 2018, at 23.50 GMT.

[24] Sabiq Caresbeth, General Concept of Agrarian Reform, http://Sabiqcarebesth.Wordpress.Com/Agrarian-Reform/Konsep-Umum-Reforma-Agraria/, accessed on January 3th, 2018, at 23.59 GMT.

or cultural elements in perceiving and implementing agrarian reform which is actually very contradictory to the main purpose of the Agrarian[25] Principles Act and Article 33 of the 1945 Constitution, namely the utilization and utilization of land as wide as it is for the welfare of the people. Third, the consistency of the government to carry out the mandate of the Agrarian Basic Law and agrarian reform, which is still in doubt. Until now, it can still be counted on the fingers, the implementation of redistribution of land but on the contrary, how many agrarian conflicts end with bloody events as described above. MPR Decree Number IX / MPR / 2001 which was replaced by MPR Decree Number 5 / MPR / 2003 and finally the Presidential Regulation No. 10 of 2006 is only a discourse without the government's seriousness. The National Land Agency's perception that the land certification program and sharing the land as an agrarian reform were considered wrong by Gunawan Wiradi as the KPA expert council (Consortium for Agrarian Reform). According to him, the true agrarian reform aims to overhaul the structure of mastery, ownership, use and management of agrarian resources (one of which island). So, the land certification process is the final stage of agrarian reform, not the initial stage of agrarian reform. Thus the things mentioned above up to now have systematically influenced the agrarian reform program that has been implemented by the government.

The current period of reform, the spirit of capitalist policies, liberals, and competition has not changed. Then the agrarian policy continues that already exists and is practised in the New Order, even through sectoral agencies. The National Land Agency tried to reduce and return it to the Agrarian Law but did not get enough support from sectoral agencies. Reflected in two policy groups:

1. Land policy policies or plans developed by sectoral agencies outside the National Land Agency, which further enhance integrity. The Ministry of Agriculture's policy plan goes through the food estate program. Carry out food security and sovereignty.
2. An agrarian reformation that was started at the beginning of the administration of President Susilo Bambang Yudhoyono, but this does not seem to continue and is not heard anymore.[26]

At present, the presidential regulation number 86 of 2018 is issued regarding the Agrarian Reform. Agraria reform aims to reduce the inequality of land ownership and ownership to create justice and deal with agrarian disputes and conflicts. Creating a source of prosperity and prosperity, an agrarian-based society through regulation of ownership, ownership, use and utilisation of land. Creating employment opportunities to reduce poverty,

[25] Nadya Sucianti, "Reformasi Tanah Indonesia", *Lex Jurnalica*,1 (3), (2014), p.132.
[26] Nurhasana Ismail, "Arah Politik Hukum Pertanahan dan Perlindungan Kepemilikan Tanah Masyarakat", *Rechtsvending Journal*, 1 (1), (2012), pp. 40-42.

Improve community access to economic resources. Improve food security and sovereignty and improve and maintain the quality of the environment.

The object of land redistribution as referred to in Article 6 of presidential regulation number 86 of 2018 regarding agrarian reform is not an ordinary thing that is easily enjoyed by the community, because the community can enjoy the land in their country because they only rely on land that is not extended by cultivators felt this rule still smelled of the era of colonialism. The community must fight harder to be able to realise fair agrarian reform as contained in the Pancasila.

D. Conclusion

An act which is used as a juridical basis for decision making or policy in terms of diagramming in its implementation is still inserted in elements of colonialism. In addition to the evidence that still uses the Positief Wettelijk system, the state, through its tools, also puts forward repressive methods as a method of handling agrarian conflicts. So that it can be said that the "spirit" of the custom of the colonial government until now is still "carried" by the state. Inevitably, this has a profound effect on the workings of the land law system because even though the technical instructions have been regulated by law, internal police and military regulations, but are far different in practice in the field. Although there has been a presidential regulation on agrarian reform, this has not been felt by the public in the redistribution of land mandated by the 1945 constitution of the land for the welfare of the community, such as in resolving agrarian disputes that favour the justice of society.

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